

**Missouri Essay Question 1**  
**February 2004 Bar Examination**  
**Corporations**

Pipes R Us, Inc. (“Corporation”) was formed as a Missouri corporation in 1995. Corporation is in the commercial plumbing business. Joe is the sole shareholder and the sole director of Corporation.

In April 2003, Corporation received notice from the Missouri Secretary of State that grounds for administrative dissolution of the Corporation existed. Joe ignored the notification from the Secretary of State because Joe had decided to retire and to cease doing business anyway. In July 2003, after receiving no word from the Corporation in response to its April 2003 notification, the Secretary of State signed and filed a Certificate of Dissolution with an effective date of July 31, 2003, and served the Corporation with the Certificate of Dissolution prior to that date.

In early August 2003, Joe Corporation was offered a contract on a large commercial plumbing project for Big Shot Owner (“Project”). Joe decided Corporation should accept the offered contract for the Project, so Corporation could finish one more job before Joe retired. Corporation signed a contract for the Project with Big Shot Owner on August 10, 2003. The Corporation took no action to remedy its administrative dissolution. While Corporation was working on the Project, Joe started selling the Corporation’s assets in preparation for his retirement and for closing the business. Since Joe was the sole shareholder of the Corporation, he distributed all of the proceeds to himself. As the Corporation received payments from Big Shot Owner, Joe distributed the checks to himself as the sole shareholder, and deposited the checks into his personal bank account.

Corporation finished the Project in October 2003. Big Shot Owner withheld final payment from Corporation because of a dispute regarding the quality of Corporation’s work.

1. Can Big Shot Owner sue Corporation in the Corporation's name for the claim of defective workmanship? Can Corporation sue Big Shot Owner in the Corporation's name for nonpayment? Explain.
2. Is Joe, in his capacity as a director of Corporation, personally liable to Big Shot Owner for Corporation's defective work? Explain.
3. Would your answer to Question 2 change if Corporation had entered into the contract with Big Shot Owner before the effective date of the Certificate of Dissolution? Explain.
4. Can Big Shot Owner satisfy any judgment it might receive against Corporation from Joe to the extent of the Corporation's assets distributed to Joe? Explain.
5. If the Corporation wanted to liquidate, what statutory procedure should it have followed? Explain.

**Missouri Essay Question 2**  
**February 2004 Bar Examination**  
**Remedies**

The Source is a chain of large department stores with 30 stores throughout the Midwest. The Source stores sell everything from kitchenware to electronics to cosmetics to clothes. The Source hires Jack, who has a national reputation as a marketing and retail expert, as the Vice President of Retail Operations for its entire chain. Jack and The Source negotiate and sign an Employment Contract pursuant to which The Source agrees to employ Jack for a five-year term (“the Contract”). In one provision of the Contract, Jack agrees that if he leaves during the five-year term of the Contract, he will not work for any “competing business” in any city in which The Source has a store. The Contract also contains an integration clause stating that all agreements between the parties are incorporated into the written contract. Although the Contract is silent on the issue, during the negotiations the management at The Source tell Jack that if sales increase during his first two years as vice president, he will be made chief executive officer of The Source.

In his position as vice president, Jack oversees the development of marketing plans for The Source. The Source adopts a new marketing plan every year, and it is acknowledged in the industry that marketing plans become stale every nine to twelve months.

During Jack’s tenure as vice president, The Source begins to market a line of discount childrens sleepwear called “Baby.” When The Source begins to sell this line, Jack is aware that the Sleptight Company has for several years been marketing its well-established and successful “Baby-Baby” line of high-priced sleepwear that Sleptight sells only at its own stores.

After three years as vice president, during which The Source’s sales have increased, Jack announces his intention to take a position as president of a chain of small specialty stores called “Good Night,” with locations throughout the Midwest. Good Night sells only specially designed sleeping apparel under the “Good Night” label.

1. The Source comes to you seeking to stop Jack from working at Good Night.
  - a. What remedy may The Source seek in an attempt to enforce its contract with Jack? What must The Source prove to obtain that remedy? How should the court rule on The Source's claim against Jack? Explain your answer.
  - b. Anticipating trouble, Jack hires his own attorney. Jack tells his attorney that The Source's statement during negotiations that if sales increased he would become chief executive officer was crucial to his decision to take the job with The Source. Can Jack's attorney use this statement as a defense to any attempt by The Source to stop Jack from working at Good Night? Why or why not?
2. Sleptight becomes aware that The Source is marketing the "Baby" line of sleepwear when a customer attempts to return some "Baby" sleepwear to one of Sleptight's stores. What claim may Sleptight bring in an attempt to stop The Source from selling "Baby" sleepwear and what relief may Sleptight seek? What is the significance of the customer's attempt to return the "Baby" sleepwear to the Sleptight store?

**Missouri Essay Question 3**  
**February 2004 Bar Examination**  
**Administrative Law**

**THE FACTS**

Bob owns and operates the Happy Ranch Residential Facility for senior citizens in Anytown County, Missouri (Anytown). The facility houses 100 people who each pay Bob a monthly fee. All utilities are provided by Bob. These utilities include telephone service for which Bob is charged and pays \$50.00 per line per month to Anytown Telco. Anytown Telco is a telephone company that provides telephone service in Anytown. By statute, the Missouri Public Service Commission has been granted the exclusive authority to regulate the telephone services, rates and charges of any telephone company doing business in Missouri.

Recently, Bob was an overnight guest at the Lazy Days Hotel in Anytown. Like Happy Ranch, the Lazy Days Hotel houses 100 people. Also, Lazy Days provides to its lodgers all utilities, including telephone service. Anytown Telco provides the telephone service to Lazy Days.

Bob enjoyed his stay at Lazy Days and before leaving the Lazy Days Hotel, Bob struck up a conversation with Charley, the manager of Lazy Days, to find out what it took run such a facility. During this conversation, Bob learned that Anytown Telco is charging Lazy Days only \$25.00 per line per month for telephone service. Anytown Telco has been charging Lazy Days this amount during the same time period that Anytown has been charging Happy Ranch \$50.00 per line per month.

Bob contacted Anytown Telco in an effort to get Anytown Telco to charge Happy Ranch the same price as Anytown Telco charges Lazy Days Hotel, and Anytown Telco refused.

Bob now comes to you for advice on how he should proceed. In your research you have found that Missouri law prohibits a telephone company from charging different rates to

different customers for the same services provided at the same time and under the same or substantially the same circumstances and conditions.

### **THE QUESTIONS**

1. How would you advise Bob to proceed in his attempt to get Anytown Telco to charge Happy Ranch the same price as Lazy Days Hotel is paying? Explain fully.
2. What recourse would be available to Bob in the event of an adverse determination in the proceeding described in Question 1? Explain fully.
3. If Bob decides to file an action before the Missouri Public Service Commission (Mo PSC) and wants Charley to give testimony, does he have the ability to legally compel Charlie to testify in that action? If so, how? If not, why not? Explain fully.

**Missouri Essay Question 4**  
**February 2004 Bar Examination**  
**Missouri Civil Procedure**

Harry Homeowner asked some of his friends to help him renovate an old home he had recently bought. Paula Painter agreed to help Harry and Paula spent several days removing paint from the walls using a heat gun. Several weeks after helping Harry, Paula began to feel sick. She went to the doctor and was diagnosed with lead poisoning. She contends that she got the lead poisoning by inhaling the paint fumes in Harry Homeowner's house and she filed a claim for personal injuries against Harry Homeowner in Circuit Court.

Harry had previously purchased homeowner's insurance from The Great Insurance Company. He notified the insurance company that he had been sued. The insurance company doesn't think that Paula's claims are covered because there is an exclusion for any injuries caused by a pollutant. A pollutant is defined as any hazardous substance, including lead. The insurance company wants a court to determine whether coverage exists under the policy.

1. What type of action can the insurance company file to obtain a judgment as to whether the exclusion applies or whether coverage is afforded under the policy for Paula's injuries and what does the court have the power to decide?

Assume that the insurance company hires you and you file suit in Circuit Court. You want to eventually file a motion for summary judgment.

2. Name and describe three forms of discovery allowed under the Missouri Rules of Civil Procedure that may assist you in obtaining the evidence you need in order to file a motion for summary judgment.
3. What is the standard the trial court uses in order to determine whether summary judgment is warranted in favor of your client?

Assume that you and your opponent both file motions for summary judgment. The trial court grants your motion for summary judgment and denies your opponent's. No party files any motions following the entry of the trial court's judgment.

4. Your opponent files a notice of appeal 45 days after the trial court's entry of judgment. Is the notice of appeal timely? Why or why not?
5. If the trial court had denied both motions for summary judgment, is there any appellate relief you could seek prior to going to trial on the merits? Name and describe one appellate remedy you could seek.